



STATE OF WASHINGTON

DEPARTMENT OF GENERAL ADMINISTRATION

200 General Administration Building, P.O. Box 41000 • Olympia, Washington 98504-1000  
(360) 902-7300 • TDD (360) 664-3799

November 6, 2008

The Honorable Rob M. McKenna  
Washington State Attorney General  
Office of the Attorney General  
P.O. Box 40100  
Olympia, WA 98504-0100

Dear Attorney General McKenna:

I am writing as Director of the Washington State Department of General Administration (GA) to request an official opinion of the Attorney General on an important issue of statutory interpretation. Your opinion regarding the jurisdiction of the Capital Projects Advisory Review Board (CPARB) and Project Review Committee (PRC), created as a part of GA by SSHB 1506, 2007 Washington Laws, Chapter 494, § 102 (codified in chapter 39.10 RCW) is needed. GA provides staff support to the CPARB as may be required for the proper discharge of its functions.

One of the statutory purposes for CPARB is to provide an evaluation of processes used in public capital projects, including alternative public works. CPARB was also directed to establish a Project Review Committee (PRC) to review and approve public works projects that utilize the design-build and general contractor/construction manager (GC/CM) contracting procedures.

The PRC may certify some public bodies for a certain time period and those public bodies need not submit every design-build and GC/CM project to the PRC for its approval. If a public body is not certified, then it must seek approval for each design-build and GC/CM project that it intends to undertake.

"Public body" is defined in RCW 39.10.210(12) as: "[A]ny general or special purpose government, including but not limited to state agencies, institutions of higher education, counties, cities, town, ports, school districts, and special purpose districts."

A housing authority, created pursuant to chapter 35.82 RCW, contends that it may use GC/CM and design-build contracting processes without seeking the prior approval of the PRC. The housing authority claims it is exempt from the PRC review and approval process based on RCW 35.82.070(10) which states in part that: "No provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an [housing] authority unless the legislature shall specifically so state."



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Housing authorities are created by and for cities and counties per RCW 35.82.030. The Attorney General's Office has characterized housing authorities as "municipal corporations," AGO 55-57, No. 111 (1955), "public corporate agencies," AGLO 1975, No. 32 (1975), "public bodies corporate and politic," and "public agencies," therefore making them subject to the public works laws of the state. See AGO 1983 No. 2 (1983) and RCW 39.04.010.

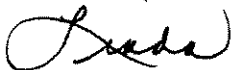
The Washington State Supreme Court ruled that 35.82 does not give a housing authority the ability to refuse to follow its statutory duty to contract with a local fire protection district because the statute did not specifically mention housing authorities. King County Fire Protection Districts #16, #36 and #40 v. Housing Authority of King County, 123 Wn.2d 819, 828, 872 P.2d 516, 520 (1994).

Therefore, in order for CPARB and its Project Review Committee to know how to proceed in relation to the Housing Authorities, I pose the following questions for your official response:

- (1) Does the definition of "public body" in RCW 39.10.210(12) include housing authorities, thereby requiring housing authorities to gain approval of the PRC prior to utilizing alternative public works processes?
- (2) If so, does RCW 35.82.070(10) exempt housing authorities from the requirement of gaining approval of the PRC prior to utilizing alternative public works processes?
- (3) Does any other provision of law exempt housing authorities from the requirement of gaining approval of the PRC prior to utilizing alternative public works processes?

Thank you for your attention to this request. We look forward to receiving your opinion.

Sincerely,



Linda Villegas Bremer  
Director